



Indiana Department of Environmental Management
Office of Air Quality
Rule Fact Sheet (Updated)
October 3, 2001

Air Permit Program Approval #00-267(APCB)

Overview

The Indiana Department of Environmental Management (IDEM) has developed proposed rule language for amendments to 326 IAC 2 as required by P.L. 112-2000 (HEA 1343). IDEM has also made changes to 326 IAC 2 regarding amendments necessary to obtain U.S. EPA's approval of the prevention of significant deterioration (PSD) rules as part of the state implementation plan and federal approval of the Title V permit program.

Citations Affected

Amends 326 IAC 2 concerning amendments necessary to obtain U. S. EPA approval of the prevention of significant deterioration (PSD) rules as part of the state implementation plan and federal approval of the Title V permit program. Amends other sections of Title 326 for consistency. Repeals 326 IAC 2-7-25. Effective 30 days after filing with the secretary of state.

Affected Persons

Sources required to have a Title V or PSD permit.

Potential Cost

The potential cost of this proposed rule is anticipated to be low because the changes would not necessitate implementation of substantive new requirements for regulated sources. These amendments are required for U. S. EPA approval of the Title V and PSD permit programs, and to implement the statutory

requirements of P. L. 112-2000.

Outreach

In addition to the publication of the Second Notice of Comment Period in the Indiana Register, IDEM sent copies of the Second Notice to those individuals that submitted comments to U. S. EPA concerning deficiencies in the Indiana Title V permitting process. IDEM also met with members of the regulated community, at their request, to discuss the draft changes. A third comment period was open from July 1, 2001 through July 23, 2001.

Description

The purpose of this rulemaking is to implement P.L.112-2000 and to amend Indiana's Title V and PSD rules at 326 IAC 2 to address any deficiencies that would prevent U.S. EPA approval of the state rules.

Changes Needed to Implement P.L.112-2000

Highlight: Exempt emission units, operations, or processes are not subject to "potential to emit" thresholds except under certain circumstances specified by the air pollution control board.

Public Law 112-2000 addresses the construction or modification of emission units, operations, or processes that are exempt from the requirement to obtain a registration, permit, modification approval, or permit revision. Prior to passage of P.L. 112-2000, the permit rule restricted this exemption to those activities with the potential to emit regulated pollutants below

thresholds established in 326 IAC 2. P.L. 112-2000 states that as long as any activity is listed as exempt from permitting, that exemption cannot be determined based on the potential to emit. P.L. 112-2000 relieves the permittee and the agency from demonstrating that potential to emit is in fact below the applicable exemption thresholds. However, the air pollution control board may include potential to emit as a factor to consider if the activity would result in construction or modification: (1) subject to federal prevention of significant deterioration (PSD) requirements as set out in 326 IAC 2-2 and 40 CFR 52.21; (2) subject to nonattainment new source review requirements as set out in 326 IAC 2-3; (3) located at a source that has an operating permit issued under 326 IAC 2-7, where the construction or modification would be considered a Title I modification under 40 CFR Part 70; or (4) that would result in the source needing to make a transition to an operating permit issued under 326 IAC 2-6.1, 326 IAC 2-7, or 326 IAC 2-8. The statute directed the Air Pollution Control Board to adopt rules to reflect this legislative change by January 1, 2002.

Changes Needed for Title V Program Approval

Highlights:

- c Clarifies that all Part 70 changes must go through permit modification procedures.*
- c Clarifies circumstances in which conditions do not expire.*
- c Adds a 30 day public notice for minor modifications.*
- c Clarifies when to use potential to emit calculations for trivial activities.*
- c Removes a provision that allowed an exceedance of both a permit limit and surrogate parameter to be counted as one potential violation. U.S. EPA has identified this as a deficiency.*
- c Deletes administrative amendment provision related to monitoring.*
- c Removes "emergencies" as an affirmative defense for non-compliance with "health-based" emission limitations.*
- c Removes provision allowing emission limits for start-up/shutdown/malfunctions to be addressed on a case by case basis.*

- c Removes conflicting references so that streamlining requirements for units subject to multiple requirements are not less stringent than allowed by the CAA.*
- c Clarifies that a source that wishes to stay below the Part 70 thresholds must do so through the federally enforceable state operating permit (FESOP) program or the source specific operating agreement (SSOA) program.*
- c Adds thresholds for VOC and NO_x to insignificant activities definition.*
- c Adds natural gas and diesel fueled internal combustion engines to insignificant activities definition.*

Title V of the federal Clean Air Act as amended in 1990 requires states to develop a federally approvable permit program applicable to major sources of air pollution. In response to the requirements of Title V, Indiana has developed the Title V permit program. Indiana's air pollution control board adopted rules and the rules were submitted to U.S. EPA in 1994 for review. In 1995, U.S. EPA published final interim approval for Indiana's Title V rules (60 FR 57188). Because of a pending legal challenge, U.S. EPA is on an expeditious schedule to finalize approval of states' Title V programs. States must address deficiencies promptly, therefore, or risk disapproval of their permit programs. While the U.S. EPA has proposed to fully approve Indiana's program in the July 30, 2001 Federal Register, there have been many changes to the rule since 1994 and those will need to be submitted for program approval.

IDEM proposes the following corrections to deficiencies identified by U.S. EPA to ensure federal approval of Indiana's Title V rules:

- c IDEM has made revisions to clarify that although a change at a Part 70 source may be exempt from pre-construction approval, Part 70 requires that many otherwise exempt changes go through permit modification procedures. Therefore, references to Title V permit modifications have been removed from the exemptions found in 326 IAC 2-1.1-3. 326 IAC 2-7-1(21)(k) has been revised to*

- clarify that an insignificant or trivial activity will only be exempt from permit modification procedures if all applicable requirements are already contained in the permit. Part 70 regulates applicable requirements, not specific emission units, therefore the emission unit descriptions can be done through administrative amendment or at the time of renewal.
- c To be consistent with 40 CFR 70.7(e), Title I modifications will be required to go through the significant permit modification procedure. To address this issue, IDEM has added language to 326 IAC 2-7-1(21)(K). The rule now clearly identifies the requirement to get a significant permit modification for insignificant activities that fall under Title I modification.
 - c According to U.S. EPA, certain conditions in a permit must not expire. To address this issue, IDEM has clarified the expiration of permits in 326 IAC 2-1.1-9.5. This language will also address the U.S. EPA's objection to the supersession of previous permits when new permits are issued.
 - c IDEM has added a 30 day public notice requirement for minor permit modifications. This was required to ensure the entire source would be covered by the permit shield.
 - c Language has been changed in 326 IAC 2-7-1(40)(A)(ii) to clarify that potential to emit calculations for trivial activities are only required for trivial activities that are not listed. Trivial activity thresholds are set at one (1) pound per day. Language has also been added to 326 IAC 2-7-1(40) which clarifies that trivial activities are not required to be included in a permit application unless it is necessary to have that information for determining applicable requirements or compliance status as required in 326 IAC 2-7-4(c). Language has been added to reiterate IDEM's authority to request additional information as necessary to fulfill the requirements of 326 IAC 2-7 or 326 IAC 2-8.
 - c IDEM has removed 326 IAC 2-7-5(1)(E) from the rule. This provision was removed at the time of the Second Notice Period, however, some commentators requested that it remain in the rule until the U.S. EPA formally requested it be removed. The provision was included in the rule that was preliminary adopted on June 6, 2001. On May 10, 2001, IDEM received a letter from Stephen Rothblatt, Chief of the Region V Air Program Branch, indicating that inclusion of this provision is a deficiency. The provision allowed an exceedance of both a permit limit and surrogate parameter to be counted as one potential violation. This was not consistent with the CAA and 40 CFR 70. The U.S. EPA has asked that it be removed.
 - c The administrative amendment at 326 IAC 2-7-11(a)(7), which allowed changes to monitoring, maintenance, and record keeping, was removed because it was not consistent with the CAA. These types of changes should be processed as minor modifications. The language in 326 IAC 2-7-12(b)(1)(B) is consistent with the CAA.
 - c The emergency provisions in 326 IAC 2-7-16 have been revised to be consistent with the CAA. IDEM has removed the allowance of emergencies to be an affirmative defense for non-compliance with a health based emission limitation. The state program must be as stringent as the federal requirements that allow defense for technology-based limitations, but not health-based limits.
 - c IDEM has removed 326 IAC 2-7-5(1)(F) from the rule. The provision allowed emission limits for start-up/shutdown/malfunions to be addressed on a case by case basis. IDEM intends to comply with the SIP and CAA and not allow this provision to create new limits through a Title V permit. This change was made to the rule to comply with the intent IDEM has expressed to U.S. EPA at the time of interim approval.
 - c The section for the establishment of streamlined requirements for units subject to multiple requirements has been revised in 326 IAC 2-7-24. All references to other sections have been removed, to avoid conflict between the program and SIP approval. The section outlines procedures that are consistent with the way that Article 2 is arranged. 326 IAC 2-7-4(c)(6) has also been deleted to clarify that Part 70 does not provide exemptions from

any SIP requirements.

- c IDEM has corrected an error from the July 1998 errata which made it appear that a source could use a Minor Source Operating Permit (MSOP) to avoid Part 70 requirements. If a source wishes to take a limit to stay below Part 70 thresholds, this must be done through the FESOP program or the SSOA program. This has been clarified by removing 326 IAC 2-7-2(b)(5)(B) and adding language to 326 IAC 2-6.1-2 and 326 IAC 2-6.1-5(c). This is consistent with existing language contained in the transition procedures found in 326 IAC 2-5.1-4 and the applicability of FESOPs found in 326 IAC 2-8-2.
- c There were two changes to the Title V insignificant activities listed in 326 IAC 2-7-1(21). The thresholds for VOC and NO_x from the Title V application form GSD-10(a) have been added. Also, the internal combustion engine insignificant activity now clarifies that it is intended for natural gas and diesel fueled engines. AP-42 Table 3.2-1 and 3.3-1 have emission factors for natural gas, diesel and gasoline internal combustion engines. Gasoline would exceed the threshold for CO, therefore this exemption is limited to natural gas and diesel fuel. Other fuels may be considered in the future if sufficient data demonstrating compliance with applicable thresholds is provided.

Changes Needed for PSD Program Approval

Highlights:

- c *Corrects typographical errors and clarifies language, including insertion of federal language.*
- c *Adds definitions and revises language in various places to be consistent with federal language.*
- c *Adds additional Class I area provisions to the rule.*
- c *Adds requirement that U.S. EPA approve extensions to exclusions from the increment consumption requirements.*
- c *Clarifies the term “expires” in relation to permit rescission.*
- c *Requires IDEM to notify U.S. EPA of*

certain permit-related actions.

- c *Removes portions of the rule that are no longer needed, including transitional provisions.*
- c *Removes the term “federally” from uses of “federally enforceable” in the definition of “potential to emit” and related definitions in the PSD rule.*
- c *Removes the pollution control project exclusion for units that are not electric utility steam generating units from 326 IAC 2-2 and places them in a new rule at 326 IAC 2-2.5.*

The prevention of significant deterioration (PSD) program requires review of major new sources of air pollution emissions and major modifications of existing sources located in attainment areas where air quality meets health based standards. This review ensures that the construction and subsequent operation of the source will comply with best available control technology (BACT) and not adversely impact the national ambient air quality standards (NAAQS) or increase pollutant concentrations above established “increments”. IDEM is currently U.S. EPA’s delegated authority for implementation of this permit program in Indiana.

IDEM intends to seek approval of its PSD program as part of its state implementation plan (SIP) from U.S. EPA. Having SIP approval would mean that Indiana’s permit program is independently authorized, and all issues are resolved within Indiana’s administrative legal system. U.S. EPA would still review and comment on proposed permits, and could seek to revoke approval if Indiana were failing to implement the program in accordance with federal guidance.

In order to seek SIP approval, Indiana’s rules must be at least as stringent as the federal rules. The Air Pollution Control Board has already adopted rule amendments that address the majority of changes needed to make Indiana’s PSD rule at least as stringent as the federal rule. Based on recent conversations with U.S. EPA, however, IDEM has discovered additional differences that must be addressed or clarified

for the state to obtain approval. These differences include typographical errors, clarifications, deletion of an old transitional provision, and inclusion of Class I area provisions. In addition, U.S. EPA has indicated that IDEM may remove the requirement that the potential to emit be “federally” enforceable for the purposes of determining applicability of the PSD program.

IDEM proposes the following changes to the PSD program rule to obtain approval under the state implementation plan:

- c IDEM has corrected several typographical errors and clarified language in the following sections:
- (1) 326 IAC 2-2-1(gg) Definition of “Repowering”: Corrected a typographical error from the prior rulemaking that placed the term “unit” after “or both” instead of before “or both”;
 - (2) 326 IAC 2-2-1(x)(2)(H)(ii) Definition of “Major Modification”: Added the phrase “or visibility limitation” to mirror the federal rule at 40 CFR 51.166(b)(2)(iii)(h)(2);
 - (3) 326 IAC 2-2-1(y) Definition of “Major Stationary Source”: Revised an incorrect reference to a permit issued under section 3 of this rule to refer to a permit issued under the federal PSD rule in 40 CFR 52.21 or the state PSD rule. The phrase “...may be located in...” has been changed to “...proposed to be located in...” to clarify that a new source would not be located in an attainment area until it was constructed;
 - (4) 326 IAC 2-2-2(a) Applicability: Added the phrase “or major modification” to expressly include major modifications in the applicability instead of allowing the applicability to be implied through the definition of “major stationary source” as it was in the previous version of the rule, and clarified the language of the sentence based on a request by the U.S. EPA Region V;
 - (5) 326 IAC 2-2-6(b)(5) Increment Consumption: An old date that is no longer needed has been removed. The phrase “...five years after the date the exclusion is granted...” adequately covers the duration of this exclusion since five years after September

23, 1981 has passed;

- (6) 326 IAC 2-2-9(1)(C) Innovative Control Technology: Corrected the reference to section 4 of the rule to refer to section 5 of the rule. Section 4 was incorrectly referenced when the rule was originally written; therefore, the reference was revised to match the federal provisions in 40 CFR 51.166(s)(2)(iii) and 40 CFR 52.21(v)(2)(iii); and
- (7) IDEM has added “Part” in references to the federal rules in several places.

- IDEM has changed 326 IAC 2-2-1(aa)(3) to follow the federal rule at 40 CFR 51.166(b)(14)(iv). This includes changing “US EPA” to “the commissioner” as the reviewing authority and changing “will” to “may”.
- c IDEM has corrected several omissions in the rule. In 326 IAC 2-2-4(c)(2), IDEM added the term “the standard” in reference to a violation of the ambient air quality standards listed in 326 IAC 1-3. This term is included in the federal rules in 40 CFR 51.166(m)(1)(iii) and 40 CFR 52.21(m)(1)(iii), but was inadvertently left out of the state rule.
- c Certain Class I area provisions were omitted from the previous PSD revisions because there were no Class I areas in or within ten kilometers of Indiana. With the proposed revision, IDEM will include all Class I area provisions in this rulemaking to preclude having to reopen the rule if a Class I area is designated in or within ten kilometers of the state. The affected sections of the rule include the definitions of “major stationary source” and “significant” in 326 IAC 2-2-1 and the requirements for exemptions in 326 IAC 2-2-4, 326 IAC 2-2-5, 326 IAC 2-2-6, and 326 IAC 2-2-7, that do not allow an emissions increase from a major stationary source or major modification to qualify as exempt if the increase impacts a Class I area.
- IDEM has added the federal definitions for “Indian Reservation” and “Indian Governing Body”.
 - The U.S. EPA Region V has requested that IDEM move the portable stationary source exemption from 326 IAC 2-2-1(y)(6)(B) to the applicability section in 326 IAC 2-2-2 to avoid confusion and more closely mirror the format

- of the federal exemption.
- The U.S. EPA requested that IDEM specifically include the requirements of 40 CFR 51.166(i)(2) in the applicability section of the rule. This requirement states that the substantive PSD requirements apply with respect to each regulated pollutant that a major source or modification would emit. While the rule addressed this requirement within several definitions, the rule did not specifically include this statement in the applicability section of the rule.
- C IDEM added the requirement that U.S. EPA approve an extension to an exclusion from the increment consumption requirements for temporary increases in 326 IAC 2-2-6(b)(4)(D)(i). The federal rule in 40 CFR 51.166(f)(4) requires that U.S. EPA approve the extension; this requirement was omitted when the rule was originally written.
- The US EPA has requested that IDEM revise the temporary increment exclusion language in 326 IAC 2-2-6(b)(4)(D) to match the federal rule in 40 CFR 51.166(f)(1)(v) and (f)(4). September 23, 1981 is not the correct date to reference since this exclusion is for emissions affected by a SIP revision that may have occurred in the past or may occur in the future.
 - The US EPA has requested that IDEM clarify the term “expires” in 326 IAC 2-2-12, since certain conditions only expire under certain circumstances. IDEM has referenced 326 IAC 2-1.1-9.5 and 326 IAC 2-2-8 since these provisions describe when a PSD condition can expire.
- C IDEM added an administrative requirement to 326 IAC 2-2-14(i) that requires IDEM to notify U.S. EPA of certain permit-related actions. This is required by the federal rule in 40 CFR 51.166(p)(1) and was accidentally omitted from the state rule when it was previously revised.
- C IDEM has also removed portions of the rule that are no longer needed. IDEM removed the exemptions added to 326 IAC 2-2-6(b) when the rule was originally written. The federal rules in 40 CFR 51.166(i)(6) and 40 CFR 52.21(i)(6) do not allow exemptions from the increment consumption requirements.
- C IDEM removed transitional provisions in 326 IAC 2-2-3(b), 326 IAC 2-2-4(b)(2), and 326 IAC 2-2-6(b)(2) that were no longer available for use. IDEM also removed the thresholds for total suspended particulate (TSP) from the exemption impact level thresholds in 326 IAC 2-2-4 and maximum allowable increment thresholds in 326 IAC 2-2-6 to provide consistency between state and federal rules since TSP was removed from the federal list of criteria pollutants. In addition, since TSP has not been removed from the state list of ambient air quality standards for the criteria pollutants in 326 IAC 1-3 and 326 IAC 2-2-5 references pollutants in 326 IAC 1-3, IDEM has added a provision in 326 IAC 2-2-5(c) to exempt sources from the requirement under 326 IAC 2-2-5 to perform an air quality impact analysis for TSP. IDEM added a qualifier for the permit rescission provisions in 326 IAC 2-2-12. In the federal rule, the rescission provisions were originally included due to the removal of the TSP thresholds; the federal provisions in 40 CFR 52.21(w)(2) included the date before which the revisions were effective as a qualifier. IDEM has revised the state rule to follow the federal requirements. However, since IDEM is just removing the TSP thresholds now, IDEM has referenced the effective date of this current revision instead of the effective date of the revision to the federal rules.
- C The U.S. EPA Region V has indicated that IDEM may remove the term “federally” from uses of the term “federally enforceable” in the definition of “potential to emit” and related definitions in the federal PSD rules in 40 CFR 52.21 and 51.166 due to a court decision on September 15, 1995, (Chemical Manufacturer’s Association, et al. v. EPA; 70 F.3d 637, 1995 WL 650098 (D.C. Cir.), 315 U.S. App.D.C. 76) that vacated the requirement. Therefore, IDEM has removed the term “federally” from uses of the term “federally enforceable” in the definitions of “allowable emissions”, “major modification”, “net emissions increase” and “potential to emit”. The term “enforceable” will now allow

consideration of terms that are enforceable by the state as well as the U.S. EPA.

C The U.S. EPA has indicated that IDEM may use their guidance, "Pollution Control Projects and New Source Review Applicability" (July 1, 1994) that expands the pollution control project exclusion for electric utility steam generating units to other types of units. However, the U.S. EPA will not approve the PSD rule if IDEM includes the pollution control project exclusion for the other types of units within the PSD rule. Therefore, IDEM has revised the definition of "major modification" and "pollution control project" in 326 IAC 2-2-1 to match the existing federal definitions in 40 CFR 51.166 and 52.21. In addition, the U.S. EPA has requested that IDEM add the U.S. EPA as an additional review authority for the pollution control project exclusion in 326 IAC 2-2-1 since the U.S. EPA retains this authority under 40 CFR 51.166(b)(2)(iii)(h).

C The U.S. EPA has indicated that it would be acceptable for IDEM to include the pollution control project exclusion elsewhere in the state rules to allow IDEM to use the U.S. EPA guidance to review pollution control projects for exclusion from the PSD rule. Therefore, IDEM has added a new rule, 326 IAC 2-2.5, that includes the pollution control project exclusions for major new source review rules in 326 IAC 2-2 that were removed from 326 IAC 2-2. In a separate rulemaking later this year, the pollution control project language will be removed from the Emission Offset rule (326 IAC 2-3) and moved to the new pollution control project rule (326 IAC 2-2.5) to maintain consistency. The new rule is based upon the criteria in the U.S. EPA pollution control project guidance.

IDEM will continue to work closely with U.S. EPA to obtain final approval of the Title V permit program and approval of the PSD permit program as part of the SIP.

Consideration of Factors Outlined in Indiana Code 13-14-8-4

Indiana Code 13-14-8-4 requires that in adopting

rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- 6) Economic reasonableness of measuring or reducing any particular type of pollution.
- 7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:
 - (A) human, plant, animal, or aquatic life; or
 - (B) the reasonable enjoyment of life and property.

Consistency with Federal Requirements

The amended rules are consistent with federal laws and rules.

IDEM Contact

Additional information regarding this rulemaking action can be obtained by calling (800) 451-6027 (in Indiana), press 0 and ask for Chris Pedersen, Rule Development Section, Office of Air Quality, (or extension 3-6868 or dial (317) 233-6868.